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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120118050-2206-02]

RIN 0648-BB49

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry and State Exemption Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement section 401(g) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The amendments eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and clarify and update various provisions of the rule.

DATES: This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the Regulatory Impact Review/Regulatory Flexibility Act Analysis are available from: Gordon Colvin, Office of Science and Technology, National Marine

Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Background information and documents are available at the NMFS Office of Science and Technology website at <http://www.st.nmfs.noaa.gov/mrip/>. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted in writing to Gordon Colvin, Office of Science and Technology, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910 and to OMB by e-mail to OIRA Submission@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: 301-427-8118; fax: 301-713-1875; or e-mail: gordon.colvin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at <http://www.gpoaccess.gov/index.html>. Background information and documents are available at the NMFS Office of Science and Technology Web site at <http://www.countmyfish.noaa.gov/index.html>.

Background

The action amends regulations at 50 CFR 600.1400 that implement the National Saltwater Angler Registry and State Exemption Program (NSAR). The rule established the requirements and procedures for anglers, spear fishers and for-hire fishing vessels to register with NMFS unless exempt from the registration requirement. The NSAR regulations also established the requirements and procedures whereby states may be designated as Exempted States. The anglers and for-hire fishing vessels licensed or registered by Exempted States,

and those anglers and vessels that are not required to be licensed or registered under the laws of such states, are not required to register with NMFS.

Based on its experience with administering NSAR and input from states, NMFS has determined that minor revisions to the rule are needed to clarify and update certain provisions in order to address the following objectives: (1) eliminate duplicative permitting and registration requirements for holders of Main Hawaiian Islands Non-commercial Bottomfish Permits; (2) allow states that exempt minors under the age of 17 from the state license or registration requirements to be eligible for Exempted State designation; (3) allow the U.S. Virgin Islands to be designated as an Exempted State under the qualifying regional survey option of the rule; and (4) clarify and update various provisions of the rule.

The proposed changes were explained in the preamble to the proposed rule.

Comments and Responses

On February 6, 2012, NMFS published a notice of the proposed rule (77 FR 5751). The public comment period ended on April 6, 2012. NMFS received thirteen comments on the proposed rule, including one from a state, one from a regional fishery management council, one from a non-governmental organization and ten from individuals. The comments and responses are summarized below.

- General comment: One non-governmental organization commented generally in support of the proposed revisions to §§ 600.1400, 600.1405, 600.1416 and 600.1417 that were not otherwise addressed in the organization's specific comments.

Response: NMFS acknowledges the comment.

- Section 600.1405(b)(7): NMFS proposed to clarify that the exception to the

NSAR registration requirement for licensed commercial fishing vessels is only for commercial fishing and not for for-hire fishing.

Comment: The Western Pacific Fishery Management Council opposed this proposal and requested that the exemption from registration also apply to for-hire fishing vessels licensed by the State of Hawaii. The comment noted that the State of Hawaii issues a single license, the “Commercial Marine License” (CML), for both commercial fishing and for-hire vessels. Because the license is named a “commercial” marine license, the holders are not currently required to register with NMFS under the commercial license exception in § 600.1405(b)(7), even when they are operating as for-hire fishing vessels otherwise required to register under § 600.1405(a). The Council believes that requiring Hawaii-licensed for-hire vessels to be federally registered is unnecessary and duplicative, given the requirement for all holders of CML’s to report trips and catch.

Response: All states, except Hawaii, are designated as Exempted States and have entered into Memoranda of Agreement to provide the necessary data to NMFS regarding their for-hire fisheries. Only Hawaii would be affected by the proposed rule change. All vessels that hold the Hawaii “Commercial Marine License,” including for-hire vessels, are required to complete and submit trip reports to the state. Because Hawaii already collects for-hire catch data from the trip reports and submits the data to NMFS, it is not necessary at the present time to compile a separate list or registry of for-hire vessels for sampling purposes. Therefore, NMFS agrees that this proposed amendment is not necessary now and will defer its adoption for future consideration.

- Section 600.1405(b)(8): NMFS proposed to provide that holders of Main

Hawaiian Islands (MHI) Non-commercial Bottomfish Permits do not need to register under NSAR.

Comments: Eight individuals and one Regional Fishery Management Council commented in support of this amendment.

Response: NMFS acknowledges the comments.

- Section 600.1416(a): NMFS proposed to clarify the existing requirement that lists of licensed anglers/registrants submitted by Exempted States need to be updated at least annually.

Comment: A state requested further information regarding what qualifies as acceptable annual updating.

Response: Guidance regarding the acceptable form, procedure and timing of annual updates was not included in the proposed rule. Annual updates are addressed in the Memoranda of Agreement with each exempted state. Adding such guidance to the rule would require development of draft guidelines and opportunity for public comment as a notice of revised or proposed rulemaking. NMFS does not believe it is necessary or desirable to develop such guidance via rulemaking at this time. It is not feasible to anticipate all of the many ways in which states may choose to conduct updates. If NMFS includes an incomplete or incorrect description of accepted methods in the rule, flexibility to allow for different or innovative methods in the future would be unnecessarily limited. NMFS will respond to requests from any state individually regarding the form, procedure and timing of annual updates.

- Section 600.1416(d): NMFS proposed to provide an extra year for states that need to enact legislation to remain qualified for Exempted State designation.

Comments: One non-governmental organization noted this revision as “concerning” due to the potential for delay in the capability of MRIP to function at full capacity in 2013 as a result of any delay in providing a complete state angler database.

Response: Via MRIP, NMFS is developing, testing and implementing a series of improvements to the design and management of survey and estimation methods used to produce marine recreational fisheries statistics, including estimates of catch and effort. The improvements will address the recommendations of the National Research Council’s 2006 Review of Recreational Fisheries Survey Methods and the requirements of Section 401(g) of the MSA. As new and improved survey and estimation methods are developed through MRIP and approved by NMFS, they will be implemented sequentially. Accordingly, there is no single date for implementation of MRIP. Rather, survey and estimation improvements will be phased in over time as they are developed and approved for implementation.

The submission of angler registry data by states supports one of the many components of MRIP, the creation of a list of anglers to be surveyed as part of the survey to develop statistics regarding angler effort, including fishing trip data, for the Atlantic and Gulf states and Puerto Rico. The current MRIP timetable for implementing system-wide changes to these effort surveys provides for continued pilot testing of effort sampling designs that use both angler registries and other lists for persons to be sampled, including postal address and telephone directory lists, into 2013. Not until these current pilot projects are complete, in late 2013 or later, will NMFS determine what specific sampling design to use in MRIP effort surveys on the Atlantic and Gulf coasts, beginning in 2014 or later. An additional year to provide updated registry information will extend into 2013. This would allow the states to

provide complete registry data by 2014, the earliest time by which the new effort survey designs will be in use for the Atlantic and Gulf coasts.

Comment: A state commented in support of this proposal and further recommended that it be extended to other administrative or legal actions a state is required to complete to retain its eligibility for exempted state designation.

Response: NMFS recognizes that some state agencies that issue fishing licenses may require additional time to formalize Memoranda of Agreement or other agreements with other state agencies to enable the sharing of data about state license holders. Accordingly, NMFS has modified the rule to include the completion of formal agreements between state agencies as another basis for a one year extension of time under § 600.1416(d) of the rule. The additional year will not affect the timing for initiating use of the new MRIP effort survey designs for the Atlantic and Gulf coasts for the same reasons as stated in the response to the previous comment.

- Section 600.1416(d)(1): NMFS proposed to allow states that do not require persons who were born before June 1, 1940, to be licensed or registered to qualify for Exempted State designations if the state can demonstrate that the number of anglers so excluded is so small that exclusion of this group from a sample will not bias survey results.

Comment: One state requested that the rule clarify what proof will be required to demonstrate that exclusion of a group from a sample will not bias survey results.

Response: NMFS can provide case specific advice to states based on their specific circumstances. Such advice need not be incorporated in the rule. Adopting such guidance in the rule would require supplemental rulemaking to develop and secure public comment on the guidance and could result in undesirable limits to its flexibility.

- Section 600.1417(b): NMFS proposed to separate the U. S. Virgin Islands (USVI) and Puerto Rico into separate regions for purposes of submission of regional surveys of recreational fishing catch.

Comments: One individual recommended that a similar amendment be included in the rule for the three western Pacific Territories/Commonwealths, separating Guam, American Samoa and the Commonwealth of the Northern Mariana Islands into three separate regions.

Response: NMFS proposed to separate the Caribbean region into two separate regions because it is expected that a survey design for the USVI will differ significantly from a survey design for Puerto Rico. Therefore, neither the USVI nor Puerto Rico would qualify for a single, regional survey-based exemption pursuant to § 600.1417(b). NMFS did not propose to separate Guam, American Samoa and the Commonwealth of the Northern Marianas Islands into three separate regions in the notice of proposed rulemaking because all three are covered by a single survey design as part of the WPacFIN Regional Survey. Each of the three has executed a MOA with NMFS and is designated as an exempted state. NMFS will reconsider this comment in a future rulemaking if the WPacFIN-based regional survey no longer supports registry exemptions for the partners.

Changes from the Proposed Rule

In response to public comment, NMFS made the following changes in the final rule:

In § 600.1405(b)(7) NMFS is not adopting the proposed amendment to clarify that the exception to the NSAR registration requirement for licensed commercial fishing vessels is only for commercial fishing and not for for-hire fishing.

In § 600.1416(d), NMFS modified the rule to allow a one year extension of time for

the completion of formal agreements between state agencies.

In addition to the changes made in response to public comment as described above, NMFS made one additional change in the final rule. In § 600.1416(b)(7), the words “or registration” are added for consistency with other references to state licenses and registrations.

Classification

NMFS has determined that the rule is consistent with the applicable provisions of the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none has been prepared.

This final rule modifies a collection-of-information subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0578. Public reporting burden for angler registration is estimated to average three minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this

data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov , or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Statistics.

Dated: July 12, 2012

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 600 to read as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1881.

2. Section 600.1400 is revised to read as follows:

§ 600.1400 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings. For purposes of this subpart, if applicable, the terms used in this subpart supersede those used in § 600.10.

Anadromous species means the following:

American shad: Alosa sapidissima

Blueback herring: Alosa aestivalus

Alewife: Alosa pseudoharengus

Hickory shad: Alosa mediocris

Alabama shad: Alosa alabamae

Striped bass: Morone saxatilis

Rainbow smelt: Osmerus mordax

Atlantic salmon: Salmo salar

Chinook, or king, salmon: Oncorhynchus tshawytscha

Coho, or silver, salmon: Oncorhynchus kisutch

Pink salmon: Oncorhynchus gorbuscha

Sockeye salmon: Oncorhynchus nerka

Chum salmon: Oncorhynchus keta

Steelhead: Oncorhynchus mykiss

Coastal cutthroat trout: Oncorhynchus clarki clarki

Eulachon or candlefish: Thaleichthys pacificus

Dolly varden: Salvelinus malma

Sheefish or inconnu: Stenodus leucichthys

Atlantic sturgeon: Acipenser oxyrhynchus oxyrhynchus

Shortnose sturgeon: Acipenser brevirostrum

Gulf sturgeon: Acipenser oxyrhynchus desotoi

White sturgeon: Acipenser transmontanus

Green sturgeon: Acipenser medirostris

Angler means a person who is angling (see 50 CFR 600.10) in tidal waters.

Authorized officer has the same meaning as in 50 CFR 600.10.

Combination license means either:

- (1) A single state fishing license that permits fishing in fresh waters and tidal waters at one price; or
- (2) A single state license that permits a group of fishing and hunting activities, including fishing in tidal waters, at a price that is less than the sum of the cost of the individual licenses.

Commercial fishing has the same meaning as in 16 U.S.C. 1802.

Continental shelf fishery resources has the same meaning as in 16 U.S.C. 1802.

Exempted state means a state that has been designated as an exempted state by NMFS pursuant to § 600.1415.

For-hire fishing vessel means a vessel on which passengers are carried to engage in angling or spear fishing, from whom a consideration is contributed as a condition of such carriage, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel.

Indigenous people means persons who are documented members of a federally recognized tribe or Alaskan Native Corporation or persons who reside in the western Pacific who are descended from the aboriginal people indigenous to the region who conducted commercial or subsistence fishing using traditional fishing methods, including angling.

Spearfishing means fishing for, attempting to fish for, catching or attempting to catch fish in tidal waters by any person with a spear or a powerhead (see 50 CFR 600.10).

State has the same meaning as in 16 U.S.C. 1802.

Tidal waters means waters that lie below mean high water and seaward of the first upstream obstruction or barrier to tidal action and that are subject to the ebb and flow of the astronomical tides under ordinary conditions.

3. In § 600.1405, revise paragraphs (b)(4), and (b)(8) to read as follows:

§ 600.1405 Angler registration.

* * * * *

(b) * * *

(4) Holds a permit issued by NMFS for for-hire fishing under 50 CFR 622.4(a)(1), 635.4(b), 648.4(a), or 660.707(a)(1);

* * * * *

(8) Holds an HMS Angling permit under 50 CFR 635.4(c) or a MHI Non-commercial Bottomfish permit under 50 CFR 665.203(a)(2);

* * * * *

4. In § 600.1416:

- a. Revise paragraphs (a), (b)(1), (c), (d) introductory text, and (d)(1); and
- b. Add paragraph (b)(7) to read as follows:

§ 600.1416 Requirements for exempted state designation based on submission of state license holder data.

(a) A state must annually update and submit to NMFS, in a format consistent with NMFS guidelines, the name, address and, to the extent available in the state's database, telephone number and date of birth, of all persons and for-hire vessel operators, and the name and state registration number or U.S. Coast Guard documentation number of for-hire vessels that are licensed to fish, or are registered as fishing, in the EEZ, in the tidal waters of the state, or for anadromous species. The Memorandum of Agreement developed in accordance with § 600.1415(b)(2) will specify the timetable for a state to compile and submit complete information telephone numbers and dates of birth for its license holders/registrants. The waters of the state for which such license-holder data must be submitted will be specified in the Memorandum of Agreement.

* * * * *

(b) * * *

(1) Under 17 years of age;

* * * * *

(7) Fishing on days designated as "free fishing days" by states. "Free fishing days" means fishing promotion programs by which states allow new anglers to fish for a specified day without a license or registration.

(c) Unless the state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample, a state may not be designated as an exempted state if its

licensing or registration program excludes anglers in any category other than those listed in paragraph (b) of this section.

(d) Required enhancements to exempted state license-holder data. An exempted state must submit the following angler identification data by Jan. 1, 2012, or within two years of the effective date of the Memorandum of Agreement, whichever is later, and thereafter in accordance with the Memorandum of Agreement. States that provide NMFS with notice that they are required to enact legislation or to enter into formal memoranda of agreement or contracts with other state agencies to comply with this requirement must submit the data within three years of the effective date of the Memorandum of Agreement:

(1) Name, address and telephone number, updated annually, of excluded anglers over age 59, unless the state can demonstrate that the number of anglers excluded from the license or registration requirement based on having a date of birth before June 1, 1940 is so small it has no significant probability of biasing estimates of fishing effort if these anglers are not included in a representative sample;

* * * * *

5. In § 600.1417, revise paragraphs (b)(1)(iii) through (vii), and (b)(3), and add paragraph (b)(1)(viii) to read as follows:

§ 600.1417 Requirements for exempted state designation based on submission of recreational survey data.

* * * * *

(b) * * *

(1) * * *

(iii) Puerto Rico;

(iv) U. S. Virgin Islands;

(v) California, Oregon and Washington;

(vi) Alaska;

(vii) Hawaii; or

(viii) American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

* * * * *

(3) Utilize angler registry data to identify individuals to be surveyed by telephone, mail or internet if such regional survey includes a telephone survey component; and

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[FR Doc. 2012-17490 Filed 07/17/2012 at 8:45 am; Publication Date: 07/18/2012]